THE HON'BLE SRI JUSTICE GODA RAGHURAM.

WRIT PETITON NO.3078 OF 2004

DATE: 13-12-2005

Between:

A.Sharanappa, s/o Eswarappa,

Aged about 32 years, Occ:Ex.Home Guard,

D.No.21/252, Mandigiri, Adoni,

Kurnool District and two others.

… Petitioners

A n d

The Superintendent of Police, Kurnool

and another

…. Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO. 3078 OF 2004

ORAL ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Home, for the respondents.

The petitioners 1 and 2 were appointed in the year 1988 and the third petitioner in 1998 as Home Guards by the State of Andhra Pradesh, under a scheme pursuant to the Andhra Pradesh Home Guards Act, 1948. By the impugned proceedings of the first respondent dated 16-10-2003, the petitioners were removed from the rolls of the Home Guards Organization on the ground that the allegations against them, having been enquired into by the DSP, Home Guards,

Kurnool, were found to be correct and their further continuance in the Organization would tarnish the image of the Police Department in the eyes of the public. In the impugned proceedings, as against the names of each of the petitioners, certain reasons for their removal are recorded. As recorded, the first petitioner is alleged to have collected monthly bribes from the organizers of mutka on behalf of the CI and the brothers of this petitioner were alleged mutka chit owners in Adoni Town. Other allegations of facilitating sexually deviant behaviour have also been recorded. Insofar as the petitioners 2 and 3 are concerned, clear allegations of misconduct are recorded.

Petitioners assail the removal of their names from the rolls of the Home Guards Organization on the ground that the removal is by a process of stigmatization and has not been preceded by notice or opportunity or by any enquiry. This is the categorical assertion in paras 6 and 7 of the writ petition.

The first respondent has filed a counter-affidavit. Suffice it to record, for the purpose of this writ petition that paragraph 5 of this counter-affidavit admits though equivocally that no opportunity was provided to the petitioners. What is stated is that the second respondent had conducted a “confidential enquiry” and submitted his enquiry report to the first respondent and since Home Guards are not Government Servants, it was considered that there was no necessity either to follow the exhaustive procedure of issuing a notice and conducting regular enquiry, nor complying with the principles of natural justice. This is the singular defence for the respondents’ conduct in removing the petitioners’ names from the rolls of Home Guards without an inquiry as known to law.

The Home Guards Organization is an Organization administered and regulated by the State under the provisions of a Statute, the Home Guards Act. Whether the service of the petitioners is voluntary or a regular service as a civil post under the State, the fact of the matter is that the petitioners, as Home Guards, are in substantial measure in public employment. They exercise the essentially sovereign functions of the State as they deal and function in the areas pertaining to the law and order administration by the State. The petitioners in any event are entitled to equality before the law and equal protection of law under Article 14 of the Constitution of India in respect of any State Action. Following fair procedure before stigmatic removal from a public service however tenuous a citizen’s incumbency, is an unavoidable State obligation and

a right guaranteed to citizens. This right has been subverted by the "confidential enquiries" conducted by the second respondent and on which basis, the first respondent has passed the impugned order.

The impugned order cannot be sustained and is accordingly quashed. The petitioners shall be entitled to all the benefits as though the impugned order of the first respondent had never been passed. The benefits include the salary and allowances and any other benefits treating the petitioners as having continued in service uninterrupted as Home Guards. The respondents are however at liberty to proceed against the petitioners in accordance with law.

The writ petition is accordingly disposed of. There shall be no order as to costs.

_____

13-12-2005.

Note:

Issue CC in one week.

Lrkm.